

Open Society Policy Center Statement on the House's New FISA Bill
March 12, 2008

The Open Society Policy Center commends the leadership of the U.S. House of Representatives for its effort to craft a bill to amend the Foreign Intelligence Surveillance Act (FISA) while preserving important protections to help protect the privacy of people in the United States. The new bill is a substantial improvement over both the Senate bill, S. 2248, and the Protect America Act (PAA). While we hope Congress will continue to work to improve FISA, we urge House members to vote in favor of this new legislation.

The new legislation contains many important provisions designed to protect civil liberties. The bill requires FISA court review of surveillance procedures before the surveillance begins, except in emergencies. It maintains limitations on reverse targeting from the House RESTORE Act that are designed to protect the privacy of persons in United States, including a requirement for the Attorney General to issue guidelines to ensure that surveillance complies with this limitation. The bill requires a court order based on probable cause to target Americans and U.S. lawful permanent residents overseas, and helps underscore that FISA is the exclusive means of domestic surveillance for intelligence purposes. While we remain concerned about the effect on Americans' international communications, we believe that this bill represents an important step forward and a far better approach than the Senate bill or the PAA.

The bill offers a thoughtful and responsible compromise in the protracted debate over retroactive immunity for telecommunications companies that participated in the illegal warrantless wiretapping program. By enabling court review of information with appropriate security protections, the bill allows the telecommunications companies to raise any defenses they may have in a court of law. We applaud the House for giving Americans their day in court and allowing a judge to do what judges do in our democracy – assess the law and the facts.

We also commend the House for including language that would establish a bipartisan congressional commission to examine warrantless surveillance. This commission would play a vital role in illuminating the nature and scope of the Administration's warrantless wiretapping activities, its legal justifications, and its impact on the privacy of persons in the United States. Together with the audit by the Inspector General, the commission will ensure Congress and the American public have all the facts when the bill sunsets at the end of 2009 and can revisit these issues from a position of far greater knowledge.

In sum, we applaud the House leadership for taking an important step forward in restoring civil liberties protections and for providing congressional oversight and public accounting of surveillance activities. At the same time, the bill does not delete any tools the intelligence community has said it needs to protect our security. We urge you to support this thoughtful and responsible compromise.